

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:18-CV-00630-KDB**

ACE MOTOR ACCEPTANCE
CORPORATION,

Plaintiffs,

v.

ROBERT MCCOY, III
ROBERT MCCOY JR.
FLASH AUTOS, LLC
MCCOY MOTORS, LLC
MISTY MCCOY
MCCOY MOTORS, LLC,

Defendants.

ORDER

THIS MATTER is before the Court on a show cause order (Doc. No. 34) issued by the Court requiring Defendants Robert McCoy, Jr. (“McCoy Jr.”), Misty McCoy (“Misty”), and McCoy Motors, LLC (“McCoy Motors”) (collectively, “McCoy Defendants”) to show cause as to why they are not in compliance with the Bankruptcy Court’s June 25, 2018 Order Concerning Interim Servicing of Accounts of Vehicle Buyers and August 1, 2018 Order Granting Motions for Preliminary Injunction and Other Emergency Relief. On September 19, 2019, the Court held a hearing on this order, which was attended by the McCoy Defendants, their counsel, Plaintiff’s counsel, and counsel for Robert McCoy, III (“McCoy III”) and Flash Auto, LLC (“Flash”). As described below, this Order sets forth the Court’s findings and interim orders in this matter.

I. Background

The McCoy Defendants’ failure to abide by the conditions in the Bankruptcy Court’s orders led the Honorable Craig Whitley to find McCoy Motors and McCoy Jr. in civil contempt on

October 19, 2018. (*See* Adversary Proceeding No. 18-03036, Doc. No. 47). On August 15, 2019, a status conference was held by this Court with all parties. At that time, counsel for the McCoy Defendants represented to the Court that efforts were underway to bring the McCoy Defendants into compliance with Judge Whitley's orders. (Doc. No. 34, at 1). Nevertheless, at the August 15 status conference, the McCoy Defendants failed to show that they had purged their contempt and were in compliance with the Bankruptcy Court's orders. Accordingly, the McCoy Defendants were ordered to show cause as to why the Court should not consider further sanctions against them, including incarceration, for failure to purge their civil contempt.

II. Findings

Considering the briefs filed in advance of the hearing on this matter and the arguments of counsel at the hearing, the Court makes the following Findings of Fact:

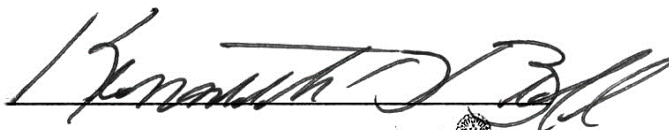
1. The Court finds by clear and convincing evidence that McCoy Jr. is in contempt of Court and has failed to purge himself and comply with Decretal Paragraph 2 of the Bankruptcy Court's June 25, 2018 order, which requires him to deposit a total of \$101,517.28 into an escrow account. To date, he has deposited only \$42,898.17 and has failed to deposit the remaining \$58,619.28. However, the Court finds based on the representation of the McCoy Defendants through counsel that they do not have and cannot readily obtain funds sufficient to purge this contempt; and
2. The Court finds by clear and convincing evidence that McCoy Jr. is in contempt of Court and has failed to purge himself and comply with Decretal Paragraph A(vii) of the Bankruptcy Court's August 1, 2018 order, which requires him to turn over any GAP refunds to Plaintiff.

III. Order

Based on these findings and the other representations of counsel and evidence adduced at the hearing and in the record, the Court hereby **ORDERS** as follows:

1. The McCoy Defendants are **ORDERED** to file with this Court net worth statements reflecting all assets, all liabilities, all sources of income, and all expenditures made as of August 1, 2018 and as of September 19, 2019 within 30 days of the issuance of this Order. These statements should be filed under seal;
2. The Court is taking under advisement what, if any, further civil sanctions on McCoy Jr. are appropriate, including incarceration, if it is found that there is continued contemptuous conduct of which he is able, but unwilling, to purge himself;
3. The Court, on its own motion, may file notice of a contempt hearing for Misty McCoy to assess her compliance with Judge Whitley's orders; and
4. The Court reserves ruling on all other matters, including a potential referral for criminal prosecution.

Signed: September 20, 2019



Kenneth D. Bell
United States District Judge

